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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 J.A.G.,

13 Plaintiff,

14 v.

15 NANCY A. BERRYHILL, Acting
16 Commissioner of Social Security,

17 Defendant.
18

Case No. 8:17-cv-00514-SHK

ORDER TO SHOW CAUSE

19 Plaintiff J.A.G.¹ (“Plaintiff”) seeks judicial review of Administrative Law
20 Judge (“ALJ”) Joseph P. Lisiecki III’s decision denying his application for
21 disability insurance benefits (“DIB”), under Title II of the Social Security Act (the
22 “Act”). The parties have consented to the jurisdiction of the undersigned United
23 States Magistrate Judge pursuant to 28 U.S.C. § 636(c). However, for the reasons
24 discussed below, the Court finds that it lacks subject matter jurisdiction over the
25 action under 42 U.S.C. § 405(g), and orders Plaintiff to show cause why the case
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28 ¹ The Court substitutes Plaintiff’s initials for Plaintiff’s name to protect Plaintiff’s privacy with respect to Plaintiff’s medical records.

1 should not be dismissed, with or without prejudice, as a result of the Court's lack of
2 subject matter jurisdiction.

3 I. BACKGROUND

4 Plaintiff filed an application for DIB on February 15, 2012, alleging disability
5 beginning on August 1, 2008. Transcript ("Tr.") 145-46.² Following a denial of
6 benefits, Plaintiff requested a hearing before an ALJ and, on February 4, 2014, ALJ
7 Lisiecki determined that Plaintiff was not disabled. Tr. 17-27. Plaintiff sought
8 review of ALJ Lisiecki's decision with the Appeals Council ("AC"), however,
9 review was denied on June 15, 2015. Tr. 1-8. Plaintiff sought district court review
10 of the AC's decision and, after the parties voluntarily stipulated to the action being
11 remanded back to the Agency to reevaluate the medical evidence, the credibility of
12 Plaintiff's subjective complaints, and whether Plaintiff could perform his past
13 relevant work, the district court remanded the action back to the Commissioner of
14 the Social Security Administration ("Commissioner" or the "Agency") for further
15 administrative proceedings. Tr. 819-29.

16 On January 19, 2017, ALJ Lisiecki again determined that Plaintiff was not
17 disabled. Tr. 688-712. At the outset of ALJ Lisiecki's second unfavorable decision
18 in 2017, ALJ Lisiecki indicated that Plaintiff could appeal the unfavorable decision
19 to the AC by filing a written exception to the AC within thirty days. Tr. 688.
20 There is no indication in the record, or in the parties' Joint Stipulation, that
21 Plaintiff sought AC review of ALJ Lisiecki's second unfavorable decision from
22 2017. See ECF No. 19, Joint Stipulation at 1 (the parties noting that "[t]he present
23 action was timely filed" after "[t]he claim was denied by ALJ decision dated
24 January 19, 2017").

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27 ² A certified copy of the Administrative Record was filed on November 8, 2017. Electronic Case
28 Filing Number ("ECF No.") 22. Citations will be made to the Administrative Record or
Transcript page number rather than the ECF page number.

II. STANDARD OF REVIEW

“The Social Security Act provides for federal court review of final decisions of the Commissioner.” Brewes v. Comm’r Soc. Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012). However, “the Commissioner’s decision is not final until the [AC] denies review or, if it accepts a case for review, issues its own findings on the merits.” Id. at 1162 (citing 20 C.F.R. §§ 404.955, 404.981; Bass v. Soc. Sec. Admin., 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)). If a claimant is “dissatisfied with a determination or decision made in the administrative review process, but do[es] not request further review within the stated time period, [the claimant] loses [thei]r right to further review and that determination or decision becomes final.” 20 C.F.R. § 404.987. “A claimant’s failure to exhaust the procedures set forth in the . . . Act, 42 U.S.C. § 405(g), deprives the district court of jurisdiction.” Bass, 872 F.2d at 833.

III. DISCUSSION

Here, as discussed above, there is no evidence in the record, nor do the parties argue, that Plaintiff sought AC review within the thirty days allowed by the Commissioner in the ALJ’s second unfavorable decision from January 2017. Therefore, the Court finds that it appears that the Court lacks subject matter jurisdiction of the action because Plaintiff failed to exhaust the administrative procedures set forth in the Act by timely seeking AC review of the ALJ’s second decision. Accordingly, Plaintiff is ordered to show cause why this case should not be dismissed, with or without prejudice, as a result of the Court lacking subject matter jurisdiction over the matter.

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IV. CONCLUSION

For the reasons set forth above, Plaintiff is ORDERED TO SHOW CAUSE in writing within fourteen days why this case should not be dismissed, with prejudice, as a result of the Court lacking subject matter jurisdiction over the matter. Defendant shall have fourteen days to reply to Plaintiff's response, if any.

IT IS SO ORDERED.

DATED: 8/14/2018



HONORABLE SHASHI H. KEWALRAMANI
United States Magistrate Judge